

MAY 11 2004
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Debra M. Szumowski

Name

Signature

DOCKET: CU-2833

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

APPLICANT: Jang-keun OH)
SERIAL NO: 10/053,839) Group Art Unit: 1744
FILING DATE: October 22, 2001) Examiner:
TITLE: CYCLONE DUST COLLECTING DEVICE)
FOR A VACUUM CLEANER)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attention: Office of Petitions

RESPONSE TO DECISION & RENEWED PETITION
TO ACCORD FILING DATE UNDER 37 CFR 1.10(c)

Dear Sir:

This is in response to the Decision mailed March 22, 2004, together with a renewed petition to accord the filing date of October 22, 2001 to this application.

In support of our renewed petition, we enclose the following additional materials:

1. Copy of a letter from the Skjerven Morrill firm to our Korean client, Nawoo Patent & Law Firm, which reports the filing of the U.S. application on October 22, 2001.
2. Copy of transmittal letter which indicates the Express Mail Label No. EL699358526US and date of submission October 22, 2001.
3. Copy of a letter from the Skjerven Morrill firm to our Korean client, Nawoo Patent & Law Firm, forwarding the official filing receipt indicating a filing date of January 22, 2002. It is noted therein that the error in the filing date was noticed and that the Skjerven Morrill firm stated that they would request a correction of the error.
4. Copy of a notice posted on the U.S. Patent & Trademark Office website concerning applications filed between the dates of September 11, 2001 and December 1, 2001 via the U.S. Postal Service.

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This application was filed on behalf of the applicant by the Skjerven Morrill firm in San Jose, California. The law firm was dissolved in approximately March, 2003.

The file, containing copies of the original filing materials of the U.S. application as filed, together with the original receipt of Express Mail Label No. EL699358526US, was not released by the Skjerven Morrill firm and is still in their possession or in the possession of the receiver. Thus, the requested true copy of the U.S. Post Office Express Mailing label is unavailable to us.

Ladas & Parry, the firm of the undersigned attorney, assumed responsibility for this application in January, 2002. The client, who is located in Korea, furnished the undersigned with a copy of the application as filed, together with a notation that the filing receipt was not yet in their possession.

In response to the Patent Office's decision indicating that the previous petition did not satisfy the requirements of Items (1) and (3) of 37 CFR 1.10(c), the undersigned replies as follows.

With regard to item (1), the petition submitted on March 9, 2004 was filed promptly upon the undersigned's becoming aware of the incorrect filing date. The undersigned did not become aware of the filing date discrepancy until a telephone conversation with the Examiner on March 9, 2004. In January, 2002, when the responsibility for this file was transferred to the office of Ladas & Parry, a copy was not received of either the filing receipt or of the U.S. PTO Express Mail receipt showing the "date in". Thus, the application filing date shown on the Express Mail Certificate was presumed to be correct, which indicates the date of deposit in the U.S. Post Office as October 22, 2001. No reason or knowledge of this discrepancy in the filing date was discovered until the application was allowed in March, 2004 during a telephone conversation with the Examiner. The undersigned was never advised by either the client or by the Skjerven firm about the discrepancy in filing dates, and no information was evident in the filing documents that would indicate that the records in the U.S. PTO did not reflect the correct filing date of October 22, 2001.

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Ladas & Parry has only recently obtained a copy of the official filing receipt from the Korean client. The Korean client was under the impression that the Skjerven Morrill firm was obtaining a corrected filing receipt as indicated in their letter of July 1, 2002 (see Exhibit 3 attached). However, the undersigned has reviewed the PAIR website and cannot find any indication of a correction of the filing date request having been entered in the Patent Office's records.

With regard to item (3), as indicated above, it is believed that the Express Mail mailing label is in the possession of the Skjerven Morrill firm, (which firm is no longer in existence) to provide a true copy of this original document. Once again, the undersigned draws the Office's attention to the Track and Confirm record from the U.S. Postal Service website, which indicates an "enroute date" of October 22, 2001. Accordingly, it is believed that the package was unequivocally in the possession of the U.S. Postal Service on October 22, 2001, therefore supporting the present petition. The delay in the U.S. Postal Service's delivery of the Express Mail package is believed to be the result of the disruption in the mail service caused by increased security precaution instituted in the Washington, D.C. mail facility between September 11, 2001 and December 1, 2001.

It is believed that a petition fee is not required. However, should such fee be deemed necessary, the Commissioner is authorized to charge our Deposit Account No. 12-0400.

Favorable reconsideration is respectfully requested.

Respectfully submitted,



Attorney for Applicant

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224 South Michigan Avenue
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(312) 427-1300

May 11, 2004

Date

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LADAS & PARRY
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 LADAS & PARRY
 224 SOUTH MICHIGAN AVENUE, SUITE 1200
 CHICAGO IL 60604

 In re Application of
 Jang-Keun Oh
 Application No. 10/053,839
 Filed January 22, 2002
 Attorney Docket No. AB-1114 US

ON PETITION

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OFFICE OF PETITIONS

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This is a decision on the petition under 37 CFR 1.10 filed, March 9, 2004.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be October 22, 2001, not the currently accorded date of January 22, 2002. In support thereof, petitioner filed a copy of the Track and Confirm sheet from the United States Post Office website showing a package with label EL699358526US as being enroute on October 22, 2001, but not being delivered at the United States Patent and Trademark Office until January 23, 2002. The subject Express Mail number was also found on the transmittal sheet that accompanied the original application papers.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

- (1) ... be filed promptly after the person becomes aware that the Office has accorded or will accord a filing date other than the USPS deposit date;

In re Application of Jang-Keun Oh
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2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constituted the correspondence prior to the original mailing by Express Mail; and

(3) . . . include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (1) and (3) above.

As to item (1) above, it is noted that more than two years has passed since the filing date of January 22, 2002, was accorded the application, however; no request from petitioner to correct the filing date has been noted prior to the recent filing on March 9, 2004. The applicable rule requires that a petition to correct the filing date be filed promptly after the applicant becomes aware that the Office has accorded, or will accord, a filing date other than the USPS date. With any renewed petition filed, petitioner must detail when petitioner became aware of the alleged incorrect filing date so that it can be determined whether the instant petition was promptly filed thereafter.

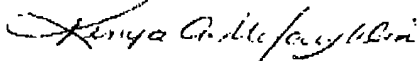
As to item (3) above, Section 1.10(c)(3) requires that a copy of the "Express Mail" label showing the "date-in" and of any other official notification by the USPS relied upon to show the date of deposit accompany the petition. The Track and Confirm sheet is noted, however, a copy of the "Express Mail label" was not found among the petition papers. In addition to providing a copy of the "Express Mail" label, it is requested that petitioner explain what petitioner believes that it took three months for the subject Express Mail package to reach the Patent and Trademark Office, especially considering that the standard delivery time for such packages is one business day.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions